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CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

VIA OVER NIGHT MAIL AND
VIA ELECTRONIC FILING

June 24, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

CC DOCKET NO. 02-06
96-45

REQUEST FOR REVIEW BY SOMERVILLE, MASSACHUSETTS SCHOOL DISTRICT
OF DECISIONS OF UNIVERSAL SERVICE ADMINISTRATOR

BILLED ENTITY: SOMERVILLE, MASSACHUSETTS SCHOOL DISTRICT
BILLED ENTITY NO.: 120536

FUNDING YEAR 2004-2005
FORM 471 APPLICATION NO.: 425096
FUNDING REQUEST NO.: 1175002

FUNDING YEAR 2005-2006
FORM 471 APPLICATION NO.: 455467
FUNDING REQUEST NO.: 1257549

FUNDING YEAR 2006-2007
FORM 471 APPLICATION NO.: 516499
FUNDING REQUEST NO.: 1421087

Dear Sir or Madam:

This is a Request for Review of the USAC Administrator's Decision for Funding Year 2004-2005 by the City of Somerville, Massachusetts Public Schools ("Somerville") of the Commitment Adjustment appeals for funding years, 2004-2005, 2005-2006 and 2006-2007.

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I. SOMERVILLE RESTATES AND ADOPTS ITS POSITION STATEMENT OF MARCH 13, 2009, AND RESTATES AND INCORPORATES EACH AND EVERY LEGAL AND EQUITABLE ARGUMENT SET FORTH BY THE CITY OF BROCKTON, MA

In the interests of judicial economy and efficiency, the City of Somerville restates and incorporates by reference each and every legal and equitable argument set forth by the City of Brockton, MA, Billed Entity Name: Brockton Public Schools, Billed Entity Number: 120639, Form 471 Application Number: 575224 (FY 07) and Form 471 Application Number: 614875 (FY 08), and incorporates them herein by reference. Any factual distinctions as to the parties are not material to the legal or equitable arguments.

As to the facts relative to the City of Somerville, the City restates and adopts its position statement filed on or about March 13, 2009, a copy of which is attached hereto as Exhibit 1. The position statement set forth in Somerville's appeal filed on November 7, 2008, which indicates that Achieve stated the City would bear no costs for the services provided by Achieve Telecom, is hereby withdrawn on the grounds that it was submitted in error.

II. THERE WERE NO REPRESENTATIONS MADE BY ACHIEVE THAT IT WOULD BE A NO COST PROGRAM.

By way of further response, the City states that the following facts set forth in the decision are erroneous, specifically with respect to the City of Somerville:

1. Archieve told the City that it would bear no costs for the services provided by Achieve Telecom.



Contrary to those facts, there were no representations made by Achieve that it would be a no cost program. The record is clear, based on the sworn affidavits of James Halloran, former Information Technology Director, Kate Ashton, Grants Coordinator, Joseph Mastrocola, former Coordinator of Instructional Technology for Somerville, and Karthik Viswanathan, Information Technology Director, that there were no representations. The submission submitted by Mr. Gannon, which does not cite the record or sworn affidavits, was clearly made in error, a misstatement intended to state Somerville had committed no wrongdoing, and should not be considered as evidence, in light of the direct evidence to the contrary.

III. REQUEST FOR REVIEW OF ALLEGATIONS OF ADMINISTRATOR'S DECISIONS AS TO FUNDING YEARS 2004-2005; 2005-2006 AND 2006-2007

ADMINISTRATOR'S ALLEGATIONS, PAGE 2:

"Information about the partnership between Achieve and USDLA was publicly available on USDLA's website. USDLA's 2006 and 2007 annual reports explain that USDLA's partnership with Achieve is providing revenue for the association . . . It is clear from USDLA's annual reports that the partnership with Achieve was beneficial to USDLA and that it was improving USDLA's revenue flow."¹

"Somerville could have learned about the partnership if it had conducted research on USDLA before applying for and accepting a grant from the organization."

SOMERVILLE'S RESPONSE: The Administrator's implication that Somerville should have known there was an alleged partnership between Achieve and USDLA is grossly unreasonable.

¹ It is unreasonable to expect Somerville to have sought and researched the sources relied upon by USAC to reach its conclusion that there is a partnership between USDLA and Achieve, i.e. USDLA's IRS Form 990s as located at www.eri-nonprofit-salaries.com/index.cfm?FuseAction=EIN-680150292&Year=2007 and the annual reports of USDLA, April 3, 2008 E-mail from Dr. John Flores (USDLA) to Jennifer Baumann (USAC-SCR) and July 17, 2008 Letter of Joy Jackson (Achieve) to Jennifer Cerciello (USAC-SCR), see footnotes 2, 3 and 4 of the Administrator's Decision.



USDLA has been in existence since 1987, but for confirming that the grant Somerville was seeking was consistent with the objective and requirement of the grant, Somerville cannot reasonably be expected to research all aspects of every grant provider it applies to for grant funding.

USDLA's website Disclaimer states: "USDLA does not endorse any particular technology, manufacturer or product and emphasizes that member service discounts are not an exclusive agreement between the association and represented vendors. Recognizing the benefits of such discounts to USDLA members, the Executive Committee welcomes offers from other vendors. USDLA does not receive any revenue as a result of these offers to its membership."

ADMINISTRATOR'S ALLEGATION, PAGE 3:

"SLD agrees that in the initial USDLA letter awarding the grant to Somerville, the letter included language that said the grant was not dependent on the selection of a particular vendor. However, the inclusion of that statement does not refute the documentation in SLD records and in the submitted appeal papers that show the USDLA grants were specifically earmarked for services provided by Achieve. Notably, all of the subsequent USDLA letters reaffirming the grant to Somerville referred to the project as the "AchieveXpress Telecommunications distance learning project," despite the fact that Somerville had titled it the "Somerville Public Schools/Achieve Express Somerville Bridging the Digital Divide Project" in its grant application. . . . [this] support[s] the claim that the USDLA grants are earmarked for Achieve's services."

SOMERVILLE'S RESPONSE: This is a specious argument. The facts are straightforward. Somerville did not focus on the reference to the project title but rather on the substantive response, including the grant funding itself. Somerville did not and could not know that USDLA allegedly was sending a similarly captioned letter to other school districts. USAC does not choose to address this fact. Without that knowledge, Somerville could be expected to 'connect the dots' to reach the conclusion that this was a form letter. Even if it had, that would not necessarily lead one to conclude that USDLA and Achieve had an alleged partnership. The



USAC Administrator's Decision requires conclusory leaps by the school districts that received USDLA funding for an Achieve project.

ADMINISTRATOR'S ALLEGATION, PAGE 4:

"SLD disagrees with the assertion that Achieve did not guarantee USDLA grants to applicants who selected Achieve's services. Statements were made to SLD that Achieve offered to help applicants who selected Achieve's servicers. Statements were made to SLD that Achieve offered to help applicants secure grants that would cover their non-discounted portion of costs. [SLD then references two emails that support this premise.]"

SOMERVILLE'S RESPONSE: As Mr. James Halloran and Mr. Joseph Mastrocola's Declarations note, they reviewed the written proposals submitted by Achieve concerning its proposed services in response to the Form 470 Applications. Exhibits A, Halloran Declaration par. 2; Exhibits C, Mastrocola Declaration par. 2. Mr. Mastrocola, who no longer is employed by Somerville, states that Achieve did not market its service to Somerville as a "no cost" service, nor did it "guarantee" that Somerville would receive USDLA grants to pay its share of the Achieve funding request. In addition, Somerville did not receive any "rebate" from Achieve for its portion of the cost. Paragraph 4 of Mr. Mastrocola's Declaration states:

"Achieve's oral and written presentations to Somerville in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the Somerville. Achieve did inform Somerville of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover Somerville's share of the cost of the services ("Somerville Share") covered by the Applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent, either orally or in writing to Somerville that if the Somerville selected Achieve



as its service provider and applied for such a Grant from USDLA, that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to the Somerville. Furthermore, USDLA specified that the Grant awards were not contingent upon the selection of Achieve for the provision of services to the Somerville.” Exhibit C, Mastrocola Declaration, par. 4.

Mr. Mastrocola’s Declaration indicates that Somerville, not Achieve, obtained, prepared and filed its own applications with USDLA. Achieve was not involved in any way with the grant application process. Rather, Somerville personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants. See Exhibit C, Mastrocola Declaration, par. 5.

Finally, the Administrator’s Decision acknowledges that “SLD agrees that grants and donations are permissible sources of resources that an applicant may use to demonstrate that funds exist to pay the applicant’s non-discounted portion of costs **and that services providers are allowed to assist applicants in locating such grants.**” P. 4, para. 5.

ADMINISTRATOR’S ALLEGATION, PAGE 4:

“[T]he Special Compliance Review team (“SCR”) questioned Achieve and USDLA regarding whether USDLA grants were provided to other E-Rate applicants who did not select Achieve as their service provider. To date, neither party has provided any documentation to refute SLD’s finding . . .”

SOMERVILLE’S RESPONSE: Not only did Somerville have no knowledge of this, but asks: How can Somerville be expected to know this? It is unreasonable, unfair and unequitable to retroactively try to place that burden on a municipality and its school district.



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ADMINISTRATOR'S ALLEGATION, PAGE 5:

“[T]he 2005 and 2008 award letters from USDLA to Somerville specifically statethat the grant was to cover ‘AchieveXpress Telecommunications distance learning project,’ despite the fact that Somerville had titled it the ‘Somerville Public Schools/Achieve Express Somerville Bridging the Digital Divide Project’ in its grant application. This evidence supports SLD’s finding that the USDLA grants were earmarked for Achieve’s services and Somerville did not pay its non-discounted portion of costs.”

SOMERVILLE’S RESPONSE: This is a specious argument. The facts are plain and simple.

Somerville did not focus on the reference to the project title but rather on the substantive response, including the grant funding itself. Somerville did not and could not know that USDLA allegedly was sending a similarly captioned letter to other school districts. USAC does not choose to address this fact. Without that knowledge, Somerville could be expected to ‘connect the dots’ to reach the conclusion that this was a form letter. Even if it had, that would not necessarily lead one to conclude that USDLA and Achieve had an alleged partnership. The USAC Administrator’s Decision requires conclusory leaps by the school districts that received USDLA funding for an Achieve project.

ADMINISTRATOR'S ALLEGATION, PAGE 5:

“There is also evidence that USDLA did not provide the funding for the grant awarded to Somerville. . . . USDLA’s 2004 Form 990, Line Item 22 is blank and USDLA does not claim that any of its revenues was used to provide grants. It should also be note that USDLA’s revenues did not cover its expenses for 2004 and . . . [i]t does not appear . . . USDLA had the funding to cover the [] grant that was awarded to Somerville for Funding Year 2004. In light of this evidence, it is questionable whether USDLA provided the grant to Somerville.”

SOMERVILLE’S RESPONSE: USAC again tries to “connect the dots” with assumptions (“it does not appear. . .”) and unreasonable expectations, as to what Somerville could have done to reach the same conclusion that USAC has, i.e. that USDLA and Achieve were ‘partners.’ By its



own admission, after doing so, at best it finds that “it is questionable whether USDLA provided the grant to Somerville.” (emphasis added) There is no evidence presented as to same. Certainly this would be news to Somerville were there to be evidence that it is in fact true.

IV. SOMERVILLE REITERATES ITS ARGUMENTS SET FORTH IN ITS MARCH 13, 2009 APPEAL OF COMMITMENT ADJUSTMENT LETTERS OF FUNDING YEARS 05-06 AND 06-07

a) Allegation: Achieve has a partnership with the USDLA and solicits donations on behalf of USDLA.

Somerville’s Response: During the years in question, James Halloran, Director of Information Technology was responsible for Somerville’s application process for E-Rate Program Support, see Exhibit A, Declaration of James Halloran, par. 1 & 2, and Kate Ashton, Grants Coordinator, see Exhibit B, Declaration of Kate Ashton, par. 2. They were assisted by Joseph Mastrocola, Coordinator of Instructional Technology for Somerville, see Exhibit C, Declaration of Joseph Mastrocola, par. 1 & 2. This included meeting with service providers, including Achieve, and receiving written materials from Achieve in response to the Applications. All Exhibits referenced in this appeal are incorporated herein by reference.

At this time Somerville applied for the funding from USAC/SLD for each of the years on appeal, and at the time each of the USDLA grants were awarded to Somerville, Somerville had no knowledge of any “partnership” between Achieve and USDLA, see Exhibit A, Declaration of James Halloran, paragraph 5, Declaration of Kate Ashton, paragraph 5 and Declaration of Joseph Mastrocola, paragraph 6.



Similarly, during the time period, Somerville had no knowledge of any donations solicited by Achieve on behalf of USDLA; see Exhibits A, B and C, Declaration of James Halloran, paragraph 5, Declaration of Kate Ashton, paragraph 5 and Declaration of Joseph Mastrocola, paragraph 6. Somerville learned of these allegations for the first time upon receipt of the USAC/SLD's Notification of Commitment Adjustment letters received in the Fall of 2008.

b) Allegation: USDLA then provides grants to applicants to use to pay their non-discount share, which is specifically designated for Achieve funding requests.

Somerville Response: Somerville had no knowledge of USDLA funds being "specifically designated" for schools that used Achieve as a service provider. In fact, John Flores, the Executive Director of USDLA, sent a February 4, 2004 letter to Somerville's Superintendent of Schools indicating that the USDLA Grant awards were not contingent upon the selection of a specific vendor:

"We understand the project will be funded primarily with E-rate funds from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company and will be dependent upon approval of the SLD. While you may have been referred to USDLA by a vendor for this project, please understand that our grant is to your school district and is not dependent upon your selection of any specific vendor."

See Exhibit D, USDLA Letter to Joseph Mastrocola, dated February 4, 2004, third paragraph; see also Exhibit C, Declaration of Joseph Mastrocola, Coordinator of Information Technology for the Somerville School Department, paragraph 4; Exhibit B, Declaration of Kate Ashton, Grants Administrator, and Exhibit A, Declaration of James Halloran, former Director of Information Technology.



- c) **Allegation: Achieve's bids to applicants indicate that Achieve markets their service to applicants as a no cost service because Achieve is able to guarantee applicants that they will receive USDLA grants to pay their share for the Achieve funding requests. Achieve is therefore providing applicants with a rebate for the applicant's portion of the cost.**

Somerville Response: As Mr. Halloran and Mr. Mastrocola's Declarations note, they reviewed the written proposals submitted by Achieve concerning its proposed services in response to the Form 470 Applications. Exhibits A and C. Halloran Declaration par. 2; Mastrocola Declaration par. 2. Mr. Mastrocola, who no longer is employed by Somerville, states that Achieve did not market its service to Somerville as a "no cost" service, nor did it "guarantee" that Somerville would receive USDLA grants to pay its share of the Achieve funding request. In addition, Somerville did not receive any "rebate" from Achieve for its portion of the cost. Mr. Mastrocola's Declaration states:

"4. Achieve's oral and written presentations to Somerville in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the Somerville. Achieve did inform Somerville of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover Somerville's share of the cost of the services ("Somerville Share") covered by the Applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent, either orally or in writing to Somerville that if the Somerville selected Achieve as its service provider and applied for such a Grant from USDLA, that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to the Somerville. Furthermore, USDLA specified that the Grant awards were not contingent upon the selection of Achieve for the provision of services to the Somerville." Exhibit C, Mastrocola Declaration, par. 4.

Mr. Mastrocola's Declaration indicates that Somerville, not Achieve, obtained, prepared and filed its own applications with USDLA. Achieve was not involved in any way with the grant



application process. Rather, District personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants. See Exhibit C, Mastrocola Declaration, par. 5.

- d) Allegation: It is a violation of program rules for the service provider to waive the applicant's non-discount portion or otherwise not require payment. The Applicant's share cannot come directly or indirectly from the applicant's service provider.**

Somerville Response: Achieve never offered to "waive" Somerville's non-discount portion nor did it otherwise not require payment. Somerville's non-discount portion did not come directly or indirectly from Achieve. Rather, the grant came from USDLA in response to grant requests filed on behalf of Somerville by Somerville, not by Achieve.

This is in compliance with guidance that is provided to applicants on USAC's website, which advises applicants that it is permissible for them to use grant funds to pay for their non-discount portion. By letter dated May 11, 2004, former Somerville Information Systems and Database Administrator, Timothy P. Egan, wrote to Achieve and, in pertinent part, acknowledged that "21% of the contract expense will be paid by the Somerville School District, billed entity #120536, in an amount not to exceed \$108,171.00," see Exhibit E. Mr. Egan also signed a contract on behalf of Somerville with Achieve Section 4 thereof obligated Somerville to pay the non-discounted share of the expense, see Exhibit F.

USAC's website advises applicants that it is permissible for them to use grant funds to pay for their non-discount portion. The USAC website includes the following language in the



section entitled "Step 11:Obligation to Pay Non-discount Portion" (located at <http://www.usac.org/st/applicants/step11/obligation-to-pay.aspx>.)

"Some service providers offer to help applicants locate grants to pay for their non-discount portion. Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants or organizations are independent of the service providers." See Exhibit G, excerpt from USAC website, "Step 11 – Obligation to Pay Non-discount Portion."; last paragraph.

As noted in Achieve's appeals in these same issues, the FCC has identified grants or donations to E-rate Program applicants as a permissible source of the resources that an applicant must demonstrate that it has in order to receive E-Rate Program support, i.e. the applicant's non-discounted share. See *In the Matter of Requests for Review of the Universal Service Administrator by Academy of Excellence, Phoenix, AZ, et al.*, 22 FCR Rcd 8722 (2007).

Somerville did provide relevant documentation of the application and award of the USDLA grants covering Somerville's share to USAC during the selective review process, despite the apparent inadvertence of having not disclosed it in the E-Rate application process, see Exhibit H.

- e) **Allegation: Applicants may not receive rebates for services or products purchased with universal service discounts from the service provider providing the services.**

Somerville Response: See response to (d) above.

- f) **Allegation: Both the applicant and the service provider are responsible for these rules violations based on Achieve's no-cost guarantee, and Achieve had an unfair competitive advantage because Achieve guaranteed a no-cost service in violation of the rule that the service provider not provide a rebate to the applicant.**



Somerville Response: As Mr. Mastrocola and Mr. Halloran's Declarations state, Achieve did not market its services to Somerville as having a no cost guarantee. Somerville is not aware of any alleged partnership between Achieve and USDLA. Exhibit C. Mastrocola Declaration, par. 4, and Exhibit A, Declaration of James Halloran, par. 4. In fact, as set forth above, while Achieve may have informed Somerville of USDLA funding, Somerville had been informed by February 4, 2004 letter from John Flores of USDLA that USDLA funds were not contingent on Somerville's selection of Achieve, see Exhibit I.

USAC's own guidance to applicants indicates that it is permissible for applicants to use grant funds to pay for their non-discount portion. See Exhibit G, excerpt from USAC website, "Step 11 – Obligation to Pay Non-discount Portion."; last paragraph. There was no violation to USAC's program rules for Somerville to use the USDLA grant to pay its non-discount share.

For each year on appeal, Somerville was awarded a grant from the USDLA which was used to satisfy Somerville's co-pay portion of the application. As stated above, Somerville did provide relevant documentation of the USDLA grants covering Somerville's share to USAC during the selective review process and in a response to a letter from USAC SLD Special Compliance Reviewer Jennifer Baumann, see Exhibit I, Declaration of Karthik Viswanathan, as attached hereto and incorporated herein by reference. To the extent Somerville may have inadvertently not checked box 25f of the Form 471 indicating that a service provider listed on the Forms 471 had provided assistance to Somerville in locating funds in item 25e, this was an unintended omission by Somerville's employee(s).



USAC has alleged no violations of program rules committed knowingly by Somerville.

Somerville was not responsible for any violations of USAC rules for the years on appeal.

V. IF A RULE OR STATUTORY VIOLATION IS DETERMINED TO HAVE BEEN COMMITTED, EQUITY DEMANDS THAT RECOVERY SHOULD NOT BE SOUGHT FROM SOMERVILLE

Equity demands that if Achieve, through its dealings with USDLA or otherwise, violated applicable rules and regulations, then Achieve and not Somerville, should not bear the burden of repaying said funds. Based upon all of the facts set forth above, Somerville alleges that it would be a significant hardship should Somerville be ordered to repay funds paid directly to Achieve after Somerville acted in a manner so as to comply with all relevant rules and regulations. A waiver, or deviation from the general rule, would better serve the public interest, than would strict adherence to a general rule. *In the Matter of Exigent Technologies*, CC Docket No. 02-6, FCC File Nos. SLD-239449 (Adopted Oct. 20, 2009), fn. 24, citing 47 C.F.R. §1.3. “In terms of who to recover from, the Commission has stated that ‘recovery actions should be directed to the party or parties that committed the rule or statutory violation in question.’” *Id.* at 5.

Finally, “[t]he Commission may waive any provisions of its rules on its own motion and for good cause shown.” *Id.*

VI. CONCLUSION AND REQUEST FOR RELIEF

Somerville was not responsible for any violations of USAC rules for the years on appeal. For each year on appeal, Somerville fully disclosed the existence of the USDLA grants and their source, and has complied with USAC/SLD’s program requirements. After disclosing such grants, USAC approved funding to Somerville for each of the four (4) years on appeal. Somerville



acted in reliance on USAC's approvals of these applications, reasonably believing that the grant arrangement, which was consistent with guidance to applicants on USAC's website, was acceptable to USAC. See Exhibit G, , excerpt from USAC website, "Step 11 – Obligation to Pay Non-discount Portion."; last paragraph.

Somerville does not understand why USAC is now, years later, taking the position that this arrangement was unacceptable, based on allegations that were completely unknown to Somerville, and which Somerville has no participation in, then asking Somerville to repay over \$1.7 million dollars that it never received.

For the reasons set forth above, Somerville requests that USAC find in favor of Somerville, grant this appeal for all years, cancel the two (2) funding year Commitment Adjustment letters, and pay any outstanding unpaid invoices for the services provided Somerville during funding years 2005-2006 and 2006-2007.

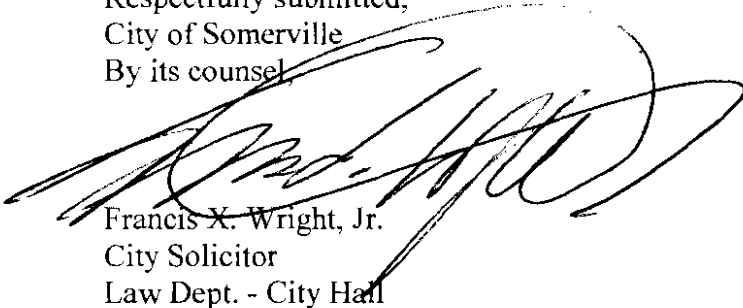
Furthermore, Somerville respectfully requests that in the event the Federal Communications Commission denies these appeals and finds that there were program violations based on an allegedly improper relationship between Achieve and USDLA that it also find that Somerville had no knowledge of or participation in, and therefore Somerville respectfully requests that it be excluded from any punitive action or demands for reimbursement in connection with these grants. It would be inequitable for USAC/SLD to hold Somerville accountable for such actions and would violate public policy to require Somerville to reimburse \$632,934.00 in funds disbursed to Achieve.

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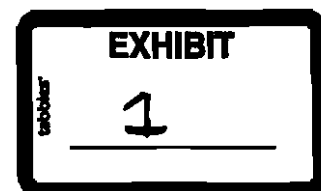
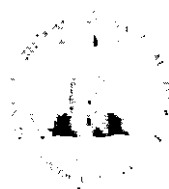
Should you have any questions, please contact Somerville's counsel listed below. Thank you for your anticipated cooperation and assistance in this matter.

Respectfully submitted,
City of Somerville
By its counsel,



Francis X. Wright, Jr.
City Solicitor
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93 Highland Avenue
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(617) 625-6600, ext. 4410
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cc: Honorable Joseph A. Curtatone, Mayor of the City of Somerville
Honorable Michael E. Capuano, U.S. House of Representatives



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

March 13, 2009

BY OVERNIGHT MAIL
AND ELECTRONIC MAIL

Letter of Appeal
Schools and Libraries Division
Dept. 125-Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981

appeals@sl.universalservice.org

Re: APPEAL OF COMMITMENT ADJUSTMENT LETTERS by Applicant
City of Somerville (MA) School District

Dear Sir or Madam:

This is an appeal by the City of Somerville, Massachusetts Public Schools ("District") of the Commitment Adjustment letters for funding years, 2005-2006 and 2006-2007. All appeals are contained in this filing.

1. District Contact Information

Karthik Viswanathan, Director, Information Technology
Somerville City Hall
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2. USAC Detail for Each Funding Year on Appeal

The following is the information requested for each of the appeals, including the date of the Notification of Commitment Adjustment Letter, the Funding Request Number, the Billed Entity Name, Form 471 Application Number, Billed Entity Number and FCC Registration Number for each letter:

a) Funding Year: 2005-2006

Date of Notification of Commitment Adjustment Letter: January 14, 2009

Funding Request Number: 1257549

Billed Entity Name: Somerville School District

Form 471 Application Number: 455467

Billed Entity Number: 120536

FCC Registration Number: 0013064696

b) Funding Year: 2006-2007

Date of Notification of Commitment Adjustment Letter: January 14, 2009

Funding Request Number: 1421087

Billed Entity Name: Somerville School District

Form 471 Application Number: 516499

Billed Entity Number: 120536

FCC Registration Number: 0013064696

3) Statement of Appeal: The District hereby appeals from the Commitment Adjustment Letters seeking recovery of disbursed funds from the District, and its service provider, Achieve Telecom Network of MA, LLC ("Achieve") for funding years 2005-2006 and 2006-2007.

4) Language Appealed From:

a. Notification of Commitment Adjustment Letters: The District appeals from the following language in the Notification of Commitment Adjustment Letters for both years on appeal:

1st paragraph: "Our routine review of Schools and Library Program funding commitments has revealed certain applications where funds were committed in violation of program rules."

2nd paragraph: "In order to be sure that no funds are used in violation of program rules, the Universal Service Administrative Company (USAC) must now adjust our overall funding commitment. The purpose of this letter is to make the adjustments to your funding commitment required by program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for some or all of the program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any)."

b. Funding Commitment Adjustment Reports: The District appeals from the entire content of the Funding Commitment Adjustment Reports for both of the years on appeal. The allegations may be summarized as follows:

5) District's Responses to USAC/SLD allegations:

The District offers the following response to the allegations enumerated in sections 4.a. and b. above, for each of the years on appeal.

- a) Allegation: Achieve has a partnership with the USDLA and solicits donations on behalf of USDLA.

District's Response: During the years in question, James Halloran, Director of Information Technology was responsible for the District's application process for E-Rate Program Support, see Exhibit A, Declaration of James Halloran, par. 1 & 2, and Kate Ashton, Grants Coordinator, see Exhibit B, Declaration of Kate Ashton, par. 2. They were assisted by Joseph Mastrocola, Coordinator of Instructional Technology for the District, see Exhibit C, Declaration of Joseph Mastrocola, par. 1 & 2. This included meeting with service providers, including Achieve, and receiving written materials from Achieve in response to the Applications. All Exhibits referenced in this appeal are incorporated herein by reference.

At this time the District applied for the funding from USAC/SLD for each of the years on appeal, and at the time each of the USDLA grants were awarded to the District, the District had no knowledge of any "partnership" between Achieve and USDLA, see Exhibit A, Declaration of James Halloran, paragraph 5, Declaration of Kate Ashton, paragraph 5 and Declaration of Joseph Mastrocola, paragraph 6.

Similarly, during the time period, the District had no knowledge of any donations solicited by Achieve on behalf of USDLA; see Exhibits A, B and C, Declaration of James Halloran, paragraph 5, Declaration of Kate Ashton, paragraph 5 and Declaration of Joseph Mastrocola, paragraph 6. The District learned of these allegations for the first time upon receipt of the USAC/SLD's Notification of Commitment Adjustment letters received in the Fall of 2008.

- b) Allegation: USDLA then provides grants to applicants to use to pay their non-discount share, which is specifically designated for Achieve funding requests.

District Response: The District had no knowledge of USDLA funds being "specifically designated" for schools that used Achieve as a service provider. In fact, John Flores, the Executive Director of USDLA, sent a February 4, 2004 letter to the District's Superintendent of Schools indicating that the USDLA Grant awards were not contingent upon the selection of a specific vendor:

"We understand the project will be funded primarily with E-rate funds from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company and will be dependent upon approval of the SLD. While you may have been referred to USDLA by a vendor for this project, please understand that our grant is to your school district and is not dependent upon your selection of any specific vendor."

See Exhibit D, USDLA Letter to Joseph Mastrocola, dated February 4, 2004, third paragraph; see also Exhibit C, Declaration of Joseph Mastrocola, Coordinator of Information Technology for the Somerville School Department, paragraph 4; Exhibit B, Declaration of Kate Ashton, Grants Administrator, and Exhibit A, Declaration of James Halloran, former Director of Information Technology.

- c) Allegation: Achieve's bids to applicants indicate that Achieve markets their service to applicants as a no cost service because Achieve is able to guarantee applicants that they will receive USDLA grants to pay their share for the Achieve funding requests. Achieve is therefore providing applicants with a rebate for the applicant's portion of the cost.

District Response: As Mr. Halloran and Mr. Mastrocola's Declarations note, they reviewed the written proposals submitted by Achieve concerning its proposed services in response to the Form 470 Applications. Exhibits A and C. Halloran Declaration par. 2; Mastrocola Declaration par. 2. Mr. Mastrocola, who no longer is employed by the District, states that Achieve did not market its service to the District as a "no cost" service, nor did it "guarantee" that the District would receive USDLA grants to pay its share of the Achieve funding request. In addition, the District did not receive any "rebate" from Achieve for its portion of the cost. Mr. Mastrocola's Declaration states:

"4. Achieve's oral and written presentations to Somerville in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the Somerville. Achieve did inform Somerville of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover Somerville's share of the cost of the services ("Somerville Share") covered by the Applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent, either orally or in writing to Somerville that if the Somerville selected Achieve as its service provider and applied for such a Grant from USDLA, that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to the Somerville. Furthermore, USDLA specified that the Grant awards were not contingent upon the selection of Achieve for the provision of services to the Somerville."

Exhibit C. Mastrocola Declaration, par. 4.

Mr. Mastrocola's Declaration indicates that the District, not Achieve, obtained, prepared and filed its own applications with USDLA. Achieve was not involved in any way with

the grant application process. Rather, District personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants. See Exhibit C, Mastrocola Declaration, par. 5.

- d) Allegation: It is a violation of program rules for the service provider to waive the applicant's non-discount portion or otherwise not require payment. The Applicant's share cannot come directly or indirectly from the applicant's service provider.

District Response: Achieve never offered to "waive" the District's non-discount portion nor did it otherwise not require payment. The District's non-discount portion did not come directly or indirectly from Achieve. Rather, the grant came from USDLA in response to grant requests filed on behalf of the District by the District, not by Achieve. This is in compliance with guidance that is provided to applicants on USAC's website, which advises applicants that it is permissible for them to use grant funds to pay for their non-discount portion. By letter dated May 11, 2004, former District Information Systems and Database Administrator, Timothy P. Egan, wrote to Achieve and, in pertinent part, acknowledged that "21% of the contract expense will be paid by the Somerville School District, billed entity #120536, in an amount not to exceed \$108,171.00." see Exhibit E. Mr. Egan also signed a contract on behalf of the District with Achieve Section 4 thereof obligated the District to pay the non-discounted share of the expense, see Exhibit F.

USAC's website advises applicants that it is permissible for them to use grant funds to pay for their non-discount portion. The USAC website includes the following language in the section entitled "Step 11: Obligation to Pay Non-discount Portion" (located at <http://www.usac.org/st/applicants/step11/obligation-to-pay.aspx>.)

"Some service providers offer to help applicants locate grants to pay for their non-discount portion. Program rules do not restrict applicants from accepting grants from bona fide organizations, nor do they restrict service providers from attempting to help applicants obtain grants from such organizations, so long as the grants or organizations are independent of the service providers."

See Exhibit G, excerpt from USAC website, "Step 11 Obligation to Pay Non-discount Portion."; last paragraph.

As noted in Achieve's appeals in these same issues, the FCC has identified grants or donations to E-rate Program applicants as a permissible source of the resources that an applicant must demonstrate that it has in order to receive E-Rate Program support, i.e. the applicant's non-discounted share. See *In the Matter of Requests for Review of the Universal Service Administrator by Academy of Excellence, Phoenix, AZ, et al.*, 22 FCR Rcd 8722 (2007).

The District did provide relevant documentation of the application and award of the USDLA grants covering the District's share to USAC during the selective review

process, despite the apparent inadvertence of having not disclosed it in the E-Rate application process, see Exhibit H.

- e) Allegation: Applicants may not receive rebates for services or products purchased with universal service discounts from the service provider providing the services.

District Response: See response to 5 (c) above.

- f) Allegation: Both the applicant and the service provider are responsible for these rules violations based on Achieve's no-cost guarantee, and Achieve had an unfair competitive advantage because Achieve guaranteed a no-cost service in violation of the rule that the service provider not provide a rebate to the applicant.

District Response: As Mr. Mastrocola and Mr. Halloran's Declarations state, Achieve did not market its services to the District as having a no cost guarantee. The District is not aware of any alleged partnership between Achieve and USDLA. Exhibit C. Mastrocola Declaration, par. 4, and Exhibit A, Declaration of James Halloran, par. 4. In fact, as set forth above, while Achieve may have informed the District of USDLA funding, the District had been informed by February 4, 2004 letter from John Flores of USDLA that USDLA funds were not contingent on the District's selection of Achieve. see Exhibit I.

USAC's own guidance to applicants indicates that it is permissible for applicants to use grant funds to pay for their non-discount portion. See Exhibit G. excerpt from USAC website, "Step 11 – Obligation to Pay Non-discount Portion."; last paragraph. There was no violation to USAC's program rules for the District to use the USDLA grant to pay its non-discount share.

For each year on appeal, the District was awarded a grant from the USDLA which was used to satisfy the District's co-pay portion of the application. As stated above, the District did provide relevant documentation of the USDLA grants covering the District's share to USAC during the selective review process and in a response to a letter from USAC SLD Special Compliance Reviewer Jennifer Baumann. see Exhibit I, Declaration of Karthik Viswanathan, as attached hereto and incorporated herein by reference. To the extent the District may have inadvertently not checked box 25f of the Form 471 indicating that a service provider listed on the Forms 471 had provided assistance to the District in locating funds in item 25e, this was an unintended omission by the District's employee(s).

USAC has alleged no violations of program rules committed knowingly by the District. The District was not responsible for any violations of USAC rules for the years on appeal.

6. CONCLUSION AND REQUEST FOR RELIEF:

The District was not responsible for any violations of USAC rules for the years on appeal. For each year on appeal, the District fully disclosed the existence of the USDLA grants and their source, and has complied with USAC/SLD's program requirements. After disclosing such grants, USAC approved funding to the District for each of the four (4) years on appeal. The District acted in reliance on USAC's approvals of these applications, reasonably believing that the grant arrangement, which was consistent with guidance to applicants on USAC's website, was acceptable to USAC. See Exhibit G, , excerpt from USAC website, "Step 11 – Obligation to Pay Non-discount Portion."; last paragraph.

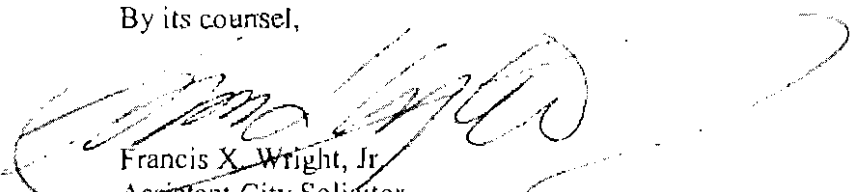
The District does not understand why USAC is now, years later, taking the position that this arrangement was unacceptable, based on allegations that were completely unknown to the District, and which the District has no participation in, then asking the District to repay over \$1.7 million dollars that it never received.

For the reasons set forth above, the District requests that USAC find in favor of the District, grant this appeal for all years, cancel the two (2) funding year Commitment Adjustment letters, and pay any outstanding unpaid invoices for the services provided the District during funding years 2005-2006 and 2006-2007.

Furthermore, the District respectfully requests that in the event USAC denies these appeals and finds that there were program violations based on an allegedly improper relationship between Achieve and USDLA that the District had no knowledge of or participation in, the District respectfully requests that it be excluded from any punitive action or demands for reimbursement in connection with these grants. It would be inequitable for USAC/SLD to hold the District accountable for such actions and would violate public policy to require the District to reimburse \$632,934.00 in funds disbursed to Achieve.

Should you have any questions, please contact the District's counsel listed below. Thank you for your anticipated cooperation and assistance in this matter.

Respectfully submitted,
City of Somerville
By its counsel,



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EXHIBIT A

DECLARATION STATEMENT

1. I, James Halloran was the Director of Information Technology for the City of Somerville, Somerville, Massachusetts ("Somerville"). I occupied the position from January, 2004 until March, 2007. My responsibilities with the Somerville included the oversight of the process of preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").

2. Consistent with my responsibilities, I participated in the Somerville's application process for E-Rate Program support for Funding Years 2005-2006 and 2006-2007 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). Part of that participation included, when necessary, meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed written proposals submitted by Achieve concerning its proposed services in response to the Applications. Pursuant to state and local procurement rules and E-Rate Program Rules, for each of the Funding Years in questions, Somerville chose Achieve to provide the digital transmission services. As required under E-Rate Program Rules, the Somerville timely submitted FCC Form 471 Nos. 2005-2006: 455467; 2006-2007: 516499 to USAC. USAC approved the E-Rate Program support by Funding Commitment Decisions Letters for Funding Requests Nos. 1257549 and 1421087, for 2005-2006 and 2006-2007 respectively (FDLS").

3. I have reviewed the both Notification of Commitment Adjustment Letters, dated January 14, 2009, whereby USAC has rescinded and seeks recovery of the support approved or provided

pursuant to the FCDL ("Decisions"). In particular, I have reviewed the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the Somerville's appeal of the Decisions.

4. Achieve's oral and written presentations to the Somerville in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the Somerville.

5. To the best of my knowledge and belief, Somerville was not aware of the existence of any partnership between Achieve and USDLA. To the best of my knowledge and belief, Somerville was unaware that Achieve allegedly solicited donations for USDLA.

6. To the best of my knowledge and belief, there was never an offer by Achieve to waive or otherwise not require payment of Somerville's Share. Nor did Achieve ever offer to rebate Somerville's Share.

7. Somerville did not withhold information as to the application and award of the Grant from USDLA to cover Somerville's Share throughout all aspects of the E-Rate application process, selective review process, and service invoice processing.

I declare under penalty of perjury that the foregoing is true and correct on this 5th day of March, 2009.


James Halloran

Middlesex, ss.

On this 5th day of March, 2009, before me, the undersigned notary public, personally appeared James Halloran, who is personally known to me to be the person whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.


Notary Public – Francis X. Wright, Jr.
My commission expires: June 18, 2015

EXHIBIT B